

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**HERBERT W. BROWN, III, et al.**

**Plaintiffs,**

**v.**

**COLEGIO DE ABOGADOS DE  
PUERTO RICO,**

**Defendant**

**CIVIL NO: 06-1645 (JP)**

**CLASS ACTION**

**MOTION FOR ORDER TO SHOW CAUSE REGARDING COLEGIO PRESIDENT  
OSVALDO TOLEDO MARTINEZ' VIOLATION OF COURT ORDERS**

**TO THE HONORABLE COURT:**

**APPEAR NOW** the Class Plaintiffs (the “Classes” or “Plaintiffs”), through the undersigned legal representation, and very respectfully state, allege and request as follows:

Today, February 7, 2011, the president of Colegio de Abogados de Puerto Rico (“Colegio”), Osvaldo Toledo Martinez, made a concerted effort to repeatedly and systematically violate this Honorable Court’s November 12, 2010 protective order. See Docket No. 202, p. 15. In the span of less than two hours, the Colegio president sent two unauthorized e-mails to class members regarding this case and then proceeded to appear on a local radio show, again discussing the case. At each step the Colegio president made completely misleading statements regarding the case as he solicited class members to opt-out of the damages class. In fact, the Colegio president’s actions were so brazen, it almost appears that the Colegio wants to be punished to bring attention to itself.

## **I. PROTECTIVE ORDER**

As the Court is aware, a protective order was issued in this case on November 12, 2010, which provided as follows:

Accordingly, the Court hereby **PROHIBITS** Defendant Colegio and any and all attorneys representing Defendant in the instant case, without prior leave of Court, from engaging in any *direct or indirect* contact or communication with any class members regarding this litigation or the claims therein until class notice has been provided and the opt out procedures have been completed. Defendant Colegio **MAY** continue to engage in regular business communications with class members, unrelated to this case, that occur in the ordinary course of business.

Docket No. 202, p. 15 (*emphasis added*).

The terms of the protective order are clear and unambiguous. Without prior approval, Colegio may not directly or indirectly contact or communication with any class member regarding this litigation. Additionally, Colegio's attempt to circulate an opt-out form was denied. Docket No. 305 (noting that an opt-out form could create confusion and was not necessary.)

## **I. FEBRUARY 7, 2011 E-MAIL AT 3:30PM**

At approximately 3:30pm today, February 7, 2011, the Colegio president, Osvaldo Toledo Martinez sent an e-mail discussing this case to class members. See Exhibit A<sup>1</sup>. The 3:30pm e-mail is an unapproved direct communication from the president of the Colegio to class members regarding the case and includes proposed opt-out language. The e-mail continues the Colegio's trend of disseminating false, misleading and confusing information to class members. In particular, the 3:30pm e-mail states that opt-out letters must be received by the administrator before February 26,

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<sup>1</sup>Plaintiffs request a term of fifteen (15) days to submit a certified English translation of Exhibits A-D.

2011. Exhibit A, p. 1. That is false, since any exclusions need only be postmarked by that date, not received. See Docket No. 285-1, p. 5.

The 3:30pm e-mail also includes a reference to the possible loss of Colegio's real property. Not only does the e-mail fail to acknowledge that it was the Colegio that offered the property as security, but the e-mail improperly attempts to evoke sympathy as a means to persuade class members to opt-out of the class.

The e-mail goes on to include statistical information regarding the life insurance policies for which Colegio impermissibly collected dues from 2002-2006 in violation of the First Amendment to the United States Constitution.<sup>2</sup>

## **II. FEBRUARY 7, 2011 E-MAIL AT 5:00PM**

Then, approximately one and a half hours later, at 5:00pm, the Colegio president sent another unapproved e-mail to class members which included a recitation of cases against the Colegio as well as misleading and confusing facts regarding this case. Exhibit C. In particular, the Colegio president asserts that the Romero Jr. decision had no affect on other members of Colegio. Id. at p. 4. Even after being found liable in this case for violating class members First Amendment rights from 2002-2006, Colegio still has not come to terms with the fact that the Romero Jr. decision *required* Colegio to stop its mandatory life insurance program. Rather than read, understand, and comply with the Romero Jr. ruling, the Colegio set off to do as it liked and engaged in a four year process of violating its member's constitutional rights. The Colegio president conveniently omits these facts.

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<sup>2</sup>This is the exact same information which was previously published on [www.yonosoydelaclase.com](http://www.yonosoydelaclase.com). See Exhibit B. As a result, it appears that Colegio either a) sponsored/authored that website or b) provided the statistical information contained therein. Regardless, such an action represents a further violation of the Court's protective order, as it was aimed by the Colegio to class members.

The 5:00pm e-mail also implies that Judge Pieras acted improperly and that confusion has been created by the lack of an opt-out form. *Id.* at p. 5. Again the Colegio president mischaracterizes these facts, since Judge Pieras's rulings have been squarely affirmed by the First Circuit and the Colegio's attorneys have had ample time and opportunity to help craft the final court-approved class action notice.

Even if the e-mail was factually accurate, it would still violate the Court's protective order, which specifically prohibits Colegio from sending any unauthorized communication to class members. The fact that the e-mail is misleading and confusing only further supports the issuance of the original protective order.

### **III. RADIO APPEARANCE**

As if two unauthorized e-mails were not enough, the Colegio president proceeded to appear on a local radio show on RadioIsla 1320am at approximately 5:00pm to discuss this case. The Colegio president acknowledged the protective order and practically dared the Court to take action. The Colegio president then engaged in a lengthy discussion of the case, which again included gross misrepresentations of the facts and a demonization of this Court and the Plaintiffs, all in an attempt to further solicit opt-outs.

The radio appearance was another calculated attempt to impermissibly communicate with class members and disseminate misleading information regarding the case.<sup>3</sup> The appearance was a

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<sup>3</sup>Plaintiffs also have reason to believe that attorney Luis Russi was acting on behalf of Colegio or pursuant to directions from Colegio, in violation of the Court's November 12, 2010 protective order when he sent a February 6, 2011 e-mail urging class members to opt-out of the class. Exhibit D. Attorney Luis Russi was a member of Colegio's Board of Directors in 2010 and was part of the campaign team of now-president Osvaldo Toledo Martinez. Furthermore, since at least one recipient of the February 6, 2011 e-mail had no prior contact with attorney Russi, there is a considerable question as to how attorney Russi acquired class member's e-mail addresses.

clear affront to the Court's protective order and part of an orchestrated effort made by Colegio today to lie to and scare class members into opting out of the class. Class members, who already had Colegio intentionally and impermissibly restrict their First Amendment rights for four years, deserve more from Colegio. These class members deserve an opportunity to review the neutral court-approved notice and make their own decision - free from Colegio's vitriol - as to whether they wish to remain in the class or exclude themselves.

#### **IV. CONCLUSION**

Unfortunately, Colegio's complete disrespect for the law or a court order is the reason this case was filed in 2006. Today, the Colegio president's complete disrespect for the law or a court order is the reason this motion is being filed.

Given the actions of Colegio president Osvaldo Toledo Martinez in violation of the Court's orders, Plaintiffs respectfully request the following:

1. an order to show cause by Colegio and president Osvaldo Toledo Martinez should not be found to have violated the Court's November 12, 2010 protective order for sending the February 7, 2011 e-mail to class members at 3:30pm (Exhibit A);
2. an order to show cause by Colegio and president Osvaldo Toledo Martinez should not be found to have violated the Court's November 12, 2010 protective order for sending the February 7, 2011 e-mail to class members at 5:00pm (Exhibit C);
3. an order to show cause by Colegio and president Osvaldo Toledo Martinez should not be found to have violated the Court's November 12, 2010 protective order for

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Given Colegio's prior actions and continued refusal to comply with the protective order, the February 6, 2011 e-mail is suspicious.

appearing on RadioIsla 1320am on February 7, 2011 and discussing this case;

4. an order for Colegio to inform the Court as to attorney Luis Russi's current relationship with Colegio and Osvaldo Toledo Martinez (including whether any Colegio e-mail lists were divulged to attorney Luis Russi);
5. an order for Colegio to inform the Court when, where, and to whom the 2002-2006 life insurance information contained in Exhibit A was provided; and
6. an order for Colegio to admit or deny that one of its board members and/or representatives registered and/or controls and/or contributed to the website [www.yonosoydelaclass.com](http://www.yonosoydelaclass.com).

Given the blatant nature of the violation and Colegio's concerted effort to draw attention to itself, Plaintiffs request that the Honorable Court take appropriate actions including but not limited to sanctions and/or contempt of court proceedings against Colegio and Osvaldo Toledo Martinez, at a time deemed most appropriate (including after February 26, 2011).

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court **GRANT** Plaintiffs fifteen (15) days to submit a certified English translation of Exhibits A-D; take appropriate actions including but not limited to sanctions and/or contempt of court proceedings against Colegio and Osvaldo Toledo Martinez; and further issue the following:

1. an order to show cause by Colegio and president Osvaldo Toledo Martinez should not be found to have violated the Court's November 12, 2010 protective order for sending the February 7, 2011 e-mail to class members at 3:30pm (Exhibit A);
2. an order to show cause by Colegio and president Osvaldo Toledo Martinez should not be found to have violated the Court's November 12, 2010 protective order for sending the February 7, 2011 e-mail to class members at 5:00pm (Exhibit C);
3. an order to show cause by Colegio and president Osvaldo Toledo Martinez should not be found to have violated the Court's November 12, 2010 protective order for appearing on RadioIsla 1320am on February 7, 2011 and discussing this case;

4. an order for Colegio to inform the Court as to attorney Luis Russi's current relationship with Colegio and Osvaldo Toledo Martinez (including whether any Colegio e-mail lists were divulged to attorney Luis Russi);
5. an order for Colegio to inform the Court when, where, and to whom the 2002-2006 life insurance information contained in Exhibit A was provided; and
6. an order for Colegio to admit or deny that one of its board members and/or representatives registered and/or controls and/or contributed to the website [www.yonosoydelaclase.com](http://www.yonosoydelaclase.com).

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico on this 7<sup>th</sup> day of February, 2011.

**CERTIFICATE OF SERVICE:** I hereby certify that on this same date, I filed the preceding motion with the Court's CM/ECF system which will notify all counselors of record.

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